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DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 735

RIN 0560-AE60

Amendments to the Regulations for Cotton Warehouses--Electronic
Warehouse Receipts, and Other Provisions

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This final rule adopts, with minor changes, a proposed rule that was published in the November 2, 1996, Federal Register (61 FR 60637) regarding cotton warehouses that are operating under the United States Warehouse Act (USWA). This rule makes a number of clarifying and technical changes to existing warehouse regulations, but also removes the requirement that all electronic warehouse receipts for cotton must be issued as single bale receipts. The rule will thereby allow warehouse operators to issue single and multiple bale warehouse receipts as either paper or electronic warehouse receipts. Portions of the proposed rule were already adopted in a final rule that was

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published in the June 20, 1997, Federal Register (62 FR 33539).

EFFECTIVE DATE: October 7, 1999.

FOR FURTHER INFORMATION CONTACT: Steve Mikkelsen, Deputy Director,

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SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has reviewed this final rule and determined the rule to be significant for the purposes of Executive Order 12866. A Cost-Benefit Assessment (CBA) was prepared. The CBA summarized the cost and benefit impact of this final rule as follows:

The costs associated with the implementation of the final rule will be minimal to all parties involved.

This final rule will benefit warehouse operators because it allows for the issuance of a single electronic cotton warehouse receipt for more than one bale of cotton. Presently, the regulations require warehouse operators who elect to use electronic warehouse receipts to issue receipts in a single-bale format.

Warehouse operators who elect to continue to issue single-bale electronic warehouse receipts or to issue multiple bale receipts as paper receipts can continue to do so under these regulations, and thus will be unaffected by this final rule.

The Cost-Benefit Assessment is available for public inspection in Room 5968, South Agriculture Building, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Washington, DC, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988. The provisions of this final rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Executive Order 12612

It has been determined that this rule is consistent with the Federalism principles espoused in Executive Order 12612, and does not warrant the preparation of a Federalism Assessment.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act of 1995

The amendments set forth in this final rule do not generate any new or revised information collection or record keeping requirements on the public. The existing information collections were previously cleared by OMB and assigned OMB control number 0560-0120.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule, because it has been determined that this rule will not have a significant effect on a substantial number of small businesses. The decision to request a license under the USWA is a voluntary decision made by the warehouse operator.

Background

The USWA, as amended (7 U.S.C. 241 et seq.) provides the Secretary of Agriculture the authority to license public warehouse operators that store cotton. As part of this licensing authority, the Secretary regulates the issuance of warehouse receipts by the cotton warehouse operators it licenses (7 U.S.C. 260). The USWA was amended in 1990 and 1992, and regulations were issued on March 31, 1994, (59 FR 15033), to permit warehouse operators to issue electronic warehouse receipts for cotton. Currently, the regulations require that all electronic warehouse receipts issued by warehouse operators must be single bale

receipts. Some warehouse operators have requested permission to issue electronic warehouse receipts for cotton using a multiple bale format to accommodate differences in the manner cotton is handled throughout the United States.

This final rule (1) modifies the method to identify and weigh each bale of cotton in a multiple bale lot, while still requiring an identification for each bale and lot, (2) deletes obsolete provisions regarding the issuance and printing of warehouse receipts; (3) removes masculine pronouns; (4) removes the requirement that all multiple bale receipts must represent between 25 and 200 bales of cotton, and as amended allows for the storage and tagging of such bales to be conducted as efficiency dictates; (5) clarifies the section relating to the system of accounts; (6) modifies the means by which a warehouse operator may notify the Administrator in the event of a fire; (7) clarifies the contents of complaints; (8) removes the requirement that all electronic cotton warehouse receipts must be issued as single bale receipts, and as amended specifically allows for the issuance of multiple bale electronic receipts; and (9) makes other clarifications and nomenclature changes.

Summary of Comments

A proposed rule was published in the Federal Register (61 FR 60637) on November 29, 1996, to change the regulations governing cotton warehouses.

Comments on the proposed rule were received from two cotton associations, one bank, one U.S. Department of Agriculture employee, one electronic warehouse receipt provider, one merchant, and four warehouse operators. All of the comments related to the use of electronic receipts for multiple bale lots.

In general comments supported the issuance of multiple bale warehouse receipts in electronic format, however, five comments indicated that multiple bale warehouse receipts should not be required to contain individual bale tags and weights. These comments indicated that individual bale tags and weights for each bale included on a multiple bale receipt should be kept on file at the warehouse, and should not be part of the multiple bale warehouse receipt data forwarded to the central filing system.

One commenter indicated they would like to have for each warehouse the number of multiple bale receipts, number of bales covered by each multiple bale warehouse receipt, and the receipt number for each electronic receipt. This commenter went on to indicate that this information should enable interested parties to obtain a tag list of the bales covered by each

multiple bale warehouse receipt from the issuing warehouse for identification purposes.

Four comments indicated that tag numbers and individual bale weights should be part of each multiple bale warehouse receipt because requiring such information would provide proper identification and preserve the information for each multiple bale lot of cotton stored under a multiple bale warehouse receipt. Three comments expressed no opinion on this issue.

The commenters that suggested bale tag numbers and individual bale weights should not be included on the warehouse receipt indicated they could contact the warehouse and obtain the information via another method. However, none of the commenters addressed the issue as to why this information, which is needed for normal commerce, should not also be required on the electronic warehouse receipt.

The Department has reviewed these comments and has determined that section 18(f) of the USWA (7 U.S.C. 260) requires each warehouse receipt issued to contain the following: ``* * * a description of such bales or packages by marks, numbers, or other means of identification and the weight of such bales or packages, * * *'' Accordingly, the governing statute requires that this information be included on all receipts, including multiple bale receipts. Therefore, comments to the contrary were not adopted.

List of Subjects in 7 CFR Part 735

Administrative practice and procedure, Cotton, Reporting and recordkeeping requirements, Surety bonds, Warehouses.

Accordingly, the provisions of 7 CFR part 735 are amended as follows:

PART 735--COTTON WAREHOUSES

1. The authority citation for part 735 continues to read as follows:

Authority: 7 U.S.C. 241 et seq.

2. Section 735.16 is amended by revising paragraphs (a)(5), (a)(9), (b), and (e) to read as follows:

Sec. 735.16 Form.

(a) * * *

(5) The tag identifier given to each bale of cotton in accordance with Sec. 735.31;

* * * * *

(9) A statement indicating that the weight was determined by a weigher licensed under the U.S. Warehouse Act, except that if at the request of the depositor, the weight is not so determined or if the point of origin weight was determined as permitted in Sec. 735.38, the receipt shall contain a statement to that effect.

(b) Except when an expiration date authorized by the Department is shown on the face of the receipt, every negotiable receipt issued for cotton stored in a licensed warehouse shall be effective until surrendered for delivery of the cotton, and every non-negotiable receipt shall be effective until surrendered for delivery of the cotton or until all cotton covered by the receipt has been delivered in response to proper delivery orders of the person rightfully entitled to the cotton: Provided, that nothing contained in this section shall prohibit a warehouseman from legally selling the cotton when the accrued storage and other charges approach the current market value of the cotton.

* * * * *

(e) If, at the request of the depositor, a warehouseman issues a receipt omitting the statement of grade and/or weight, such receipt shall have clearly and conspicuously stamped or written on the face thereof, or included as part of the electronic warehouse receipt record, either one or both of the following: ``Not graded on request of the depositor" or ``Not weighed on request of the depositor," as applicable.

* * * * *

3. Section 735.19 is revised to read as follows:

Sec. 735.19 Printing of receipts.

No receipt shall be issued by a licensed warehouseman unless it is:

(a) In a form prescribed by the Administrator;

(b) Upon distinctive paper or card stock specified by the Administrator;

(c) Printed by a printer with whom the United States has a subsisting agreement and bond for such printing; and

(d) On paper and/or card stock tinted with ink in the manner prescribed by the agreement under paragraph (c) of this section.

4. Section 735.21 is revised to read as follows:

Sec. 735.21 Return of receipts before delivery of cotton.

Except as permitted by law or by the regulations in this part, a warehouseman shall not deliver cotton for which a negotiable receipt has been issued under the Act until such receipt has been returned and canceled; and shall not deliver cotton for which a non-negotiable receipt has been issued until such receipt has been returned or until the warehouseman has obtained from the person lawfully entitled to such delivery or their authorized agent, a written delivery order that is properly signed, specifying by bale or tag number, mark, or identifier each bale to be delivered from any receipt or receipts. * * *

5. Section 735.31 is revised to read as follows:

Sec. 735.31 Tags to be attached to bales.

Except as provided in Sec. 735.32, each warehouseman shall, upon acceptance of any bale of cotton for storage, immediately attach thereto an identification tag of good quality which shall identify the bale. Such tag either shall be made of reasonably heavy waterproof paper or linen, with reinforced eyelet or eyelets, and be attached to the bale with a flexible, rustproof wire, or shall be made of such other material and attached by such other means as shall be approved by the Administrator. These tags will contain a number, mark, or identifier and shall be attached in an orderly systematic sequence, clearly distinguishable from each other.

6. Section 735.32 is amended by revising paragraphs (b) and the first two sentences of (c) to read as follows:

Sec. 735.32 Arrangement of stored cotton.

* * * * *

(b) If cotton is tendered to a licensed warehouseman for storage and the cotton is of the same grade and staple and is tendered in such quantity by any one depositor that efficiency of operation dictates that such cotton should be stored in a lot or lots without regard to visibility of all tags on all bales within any lot, the warehouseman may store such cotton if each lot originally contained two or more bales: Provided, however, that each bale entering into a lot must bear an individual bale identification, and must be stored so that the number of bales within the lot may be accurately determined.

(c) An individual lot identification tag showing the lot number and the number of bales in the lot shall be affixed by the warehouseman to each lot of cotton. The warehouseman shall also maintain an office

record showing the bale or tag number, mark, or identifier of each bale in the lot and the location of the lot in the warehouse. * * *

7. Section 735.33 is revised to read as follows:

Sec. 735.33 System of accounts.

Each warehouseman shall use a system of accounts which is approved by the Service. The system of accounts shall show the following for each bale of cotton: the tag number, mark, or identifier as specified in Sec. 735.31; its weight; its class when required or

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ascertained; its location; the dates received for, and delivered out of, storage; and the receipts issued and canceled. All systems of accounts shall include a detailed record of all moneys received and disbursed and of all effective insurance policies.

8. Section 735.38 is amended by revising paragraph (a) to read as follows:

Sec. 735.38 Weighing of cotton; weighing apparatus.

(a) Before being stored in a licensed warehouse, all cotton shall be weighed at the warehouse by a licensed weigher, and the weight so determined shall be stated on the warehouse receipt. Point of origin weights may be used for single bale or lot stored cotton by agreement with the depositor. Any point of origin weights shown on a warehouse receipt will be the official warehouse bale or lot weight. Lot cotton tendered for storage on which a multiple bale warehouse receipt is issued must be maintained so as to preserve its individual and collective identity during storage and shipment, provided that if such lot is broken at the warehouse, for the issuance of new receipts, each bale shall be weighed at the warehouse by a licensed weigher before single bale warehouse receipts are issued.

* * * * *

9. Section 735.40 is amended by revising paragraph (b) (3) to read as follows:

Sec. 735.40 Excess storage.

* * * * *

(b) * * *

(3) The shipping warehouseman must transfer all identity-preserved cotton in lots and must list on a Bill of Lading all forwarded bales by receipt number and weight. The receiving warehouseman shall promptly issue a non-negotiable warehouse receipt for each lot of cotton stored and shall attach a copy of the corresponding Bill of Lading to each receipt and return the receipt promptly to the shipping warehouseman. The receiving warehouseman will store each such lot intact, and will attach a header card to the lot showing the receipt number, number of bales, and a copy of the Bill of Lading with the individual tag numbers, marks, or identifiers to the stored lot. Such non-negotiable warehouse receipts issued for forwarded cotton shall have printed or stamped diagonally in large bold outline letters across the face of the receipt the words: ``NOT NEGOTIABLE."

* * * * *

10. Section 735.44 is revised to read as follows:

Sec. 735.44 Fire loss to be reported.

If at any time a fire occurs at or within any licensed warehouse, it shall be the duty of the warehouseman to report immediately the occurrence of such fire and the extent of damage to the Administrator.

11. Section 735.47 is revised to read as follows:

Sec. 735.47 Certificates to be filed with warehouseman.

When a grade or weight certificate has been issued by a licensed grader or weigher, a copy of such certificate shall be filed with the warehouseman in whose warehouse the cotton covered by such certificate is stored, and such certificates shall become a part of the records of the licensed warehouseman. All certificates and supporting documentation that form the basis for any receipt issued by the warehouseman shall be retained in the records of the warehouseman for a period of 1 year after December 31 of the year in which the receipt based on such certificates or supporting documentation is canceled.

12. Section 735.49 is revised to read as follows:

Sec. 735.49 Methods for drawing and marking samples.

Each sample shall be appropriately marked to show the tag number, mark, or identifier of the bale of cotton from which it was drawn and the date of sampling.

13. Section 735.77 is revised to read as follows:

Sec. 735.77 Contents of complaint.

- (a) Complaints shall be in English and shall state:
 - (1) The name and post office address of the complainant;
 - (2) The nature of the complainant's interest in the cotton;
 - (3) The name and post office address of the holder of the receipt, if someone other than the complainant;
 - (4) The name and post office address of any other interested party;
 - (5) The name and location of the licensed warehouse in which the cotton is stored, and the tag number, mark, or identifier assigned to each bale of cotton involved in the appeal, the grade or other class assigned to such cotton by the licensed warehouseman, and the date of the receipt issued therefor;
 - (6) The grade or other class assigned by the licensed classifier, if any;
 - (7) The grade or other class, different from that assigned by the licensed warehouseman, which is contended for by any interested party;
 - (8) Whether, within complainant's knowledge, any appeal involving the same cotton previously has been taken, and if so, an appropriate identification of such other appeal; and
 - (9) If samples have been agreed upon and submitted in accordance with Sec. 735.79(b).
 - (b) When practicable, the complainant shall file with the complaint, the warehouse receipt or class certificate, if any, covering the cotton involved in the appeal. When such receipt or certificate is not filed before the issuance of the cotton appeal certificate, a definite statement indicating why such papers are not produced shall be filed with the complaint.
14. Section 735.101 is amended by removing paragraph (b) and redesignating paragraphs (c) through (p) as paragraphs (b) through (o).
15. Section 735.102 is amended by revising paragraphs (d) (4), and (f) to read as follows:

Sec. 735.102 Provider requirements and standards for applicants.

* * * * *

(d) * * *

- (4) The provider or the Service may terminate the provider agreement without cause solely by giving the other party written notice 60 calendar days prior to termination.

* * * * *

- (f) Application form. Application for a provider agreement shall be made to the Secretary on forms prescribed and furnished by the Service.

Signed at Washington, DC, on October 1, 1999.
Parks Shackelford,
Acting Administrator, Farm Service Agency.
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